

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5523 of 1998

with

Civil Application No. 267 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHARABHAI KAMABHAI BHARWAD

Versus

MOHAMMED RAFIQ ISABHAI SURTI

Appearance:

MR PV NANAVATI for appellants

MR MTM HAKIM for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 12/04/99

ORAL JUDGEMENT (Per J.N. Bhatt, J.):-

1. Admit. Mr. MTM Hakim, learned advocate appears and waives service on behalf of respondent No.1. Upon the joint request of the parties, the matter is taken up for final hearing today.

2. In this appeal, under section 173 of the Motor Vehicles Act, 1988, the challenge is against the judgment and award, recorded on 30.6.1998, in Motor Accident Claim Petition No. 1393 of 1995, by the Motor Accident Claims Tribunal, Ahmedabad, at the instance of the original opponents - insured and insurer of matador vehicle.

3. Respondent No.1 is the original claimant, who came to be awarded an amount of Rs.2,53,400/- by way of compensation, for personal injuries sustained by him on account a vehicular accident, which occurred, on 1.6.1995, at about 8.15 P.M. near Vatva, in Ahmedabad Rural District, when the original claimant was proceeding on his scooter, dashed against the truck going in front of him, as the driver, all of a sudden, applied the break without giving signal, and thereafter the offending matador which was coming with excessive speed from behind, violently, dashed against the scooterist, from behind, as a result of which the claimant sustained serious injuries, which resulted into permanent partial disablement to the extent of 23% to the anatomy as a whole. There were multiple fractures of ribs No.2 to 7 of right side. Fortunately, the claimant escaped a very major mishap. He, therefore, filed the aforesaid claim petition for compensation and the Claims Tribunal awarded the aforesaid amount with interest at the rate of 15% per annum from the date of the application till the date of realisation.

4. In view of the manner and mode in which the accident occurred, the doctrine of "rep ipsa loquitur" could be, safely, pressed into service apart from the evidence of a living victim of a violent accident, respondent/ original claimant. The Tribunal, reached to the conclusion that the accident in question occurred on account of rashness and negligence on the part of the driver of the offending matador to the extent of 70% and the claimant's contribution in the happening of the accident was assessed to the extent of remaining 30%. This aspect, in reality, is not much in dispute.

5. The only question now which engages our attention is as to what amount would be just and reasonable in the facts and circumstances of the case and the evidence on record. The Tribunal has assessed the aggregate loss of Rs.3,62,000/- and in view of the finding that claimant was contributory negligent to the accident, 30% of the amount of award came to be deducted and thus an amount of Rs.2,53,400/- came to be awarded, the bracket of which is highlighted by the Tribunal in its judgment, in paragraph

5 as under:

Rs.3,20,000/- towards future loss of income
Rs. 25,000/- towards actual loss of income
Rs. 10,000/- towards pain, shock and sufferings
Rs. 15,000/- towards medicines
Rs. 1,000/- towards special food
Rs. 1,000/- towards transport

Rs.3,62,000/- total

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6. The learned advocates appearing for the parties placed before us the copies of the evidence relied on by the Tribunal. It is found from the medical evidence that the disability to the claimant is assessed by the medical officer to the tune of 23% of the body, as a whole, and the Tribunal has assessed 10% disablement for the purpose of considering and determining the financial loss in future. There is no dispute about the fact that the claimant had sustained multiple fractures of ribs No.2 to 7 on right side. The claimant was running a factory of electrical wires in the name and style of Atlas Electrical Enterprises and he was also paying Income Tax. Income Tax Assessment orders for the relevant year of 1994-95 are also produced. The income of the claimant of that year was assessed at Rs.3,29,126/- The injury certificate is produced, at Ex.30, and the medical reports are produced, at Exhs.31, 32, 33 and 34. The claimant was undergoing medical treatment as an indoor patient which kept him out of business supervision which is assessed to the tune of Rs.25,000 under the head of past economic loss. In our opinion, it is quite justified. An amount of Rs.10,000/- is awarded towards pain, shock and sufferings. The assessment of Rs.15,000/- under the head of medicines, Rs.1000 under the head of special diet and Rs.1000 under the head of transport expenses, appears to be justified.

7. Now, the only question which requires to be examined is as to whether the amount of Rs.3,20,000 awarded under the head of future economic loss is justified or not. After having considered the facts and circumstances emerging from the record of the present case, we are of the opinion that the ends of justice will be met if an amount of Rs.40,000/- is reduced and deducted from the amount awarded to the claimant by the Tribunal as it would reflect the just and reasonable amount of compensation. The claimant, in our opinion, would be thus entitled to an amount of Rs.2,13,400/- by way of compensation against the amount of Rs.2,53,400/- awarded

by the Tribunal with interest at the rate of 12% per annum from the date of the application till realization. Rest of the directions contained in the impugned judgment and award pertaining to the disbursement are not required to be disturbed.

8. Accordingly, the appeal is allowed to the aforesaid extent. No order as to costs.

10. No order on the civil application.

(karan)